

REMARKS

Claims 1, 3-6, and 8-9 are currently pending in the application. Claim 9, lines 2-3, has been amended to address antecedent basis issues with base claim 6. As explained on page 6, lines 21 and 22 of the application, the re-writing unit rewrites the updated program into the program existent in the mobile terminal.

According to the claimed invention, normal system software in a terminal device is present in a distinct storage area 1A, while update data is downloaded to a storage area 1C within the terminal device until the update data is installed. The process of installing updates may thus be deferred until an appropriate time, which avoids problems of incorrect or incomplete downloads associated with factors such as service interruptions.

The claimed invention also provides for the use of pointers to define update data 308, 408 in terms of sequential data sets 308₁, 308₂, 308₃, 408₁, 408₂, 408₃, so that incorrect and incomplete downloads may be remedied by repeating the downloading of individual data sets instead of repeating the downloading of all of the update data. An arithmetic unit 1D verifies the pointer of the completely received final update data set and decides the next pointer in connection with the next data set which should be received next. This next pointer of the second update data set is set in an updating data transmission request and sends the request to a base station 2. When the base station 2 receives the request with the next pointer from the mobile terminal 1, the data transmission is restarted from the second update data set with the next pointer.

Claims 1, 4, 6, and 8-9 were rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 6,687,901 B1 to Imamatsu in view of European Patent No. 0 802 694 A2 to Heidari and further in view of U.S. Patent No. 6,425,125 to Fries et al. and further in view of U.S. Patent 6,658,247 to Saito. Claims 3 and 5 were rejected under 35 U.S.C. § 103(a) as unpatentable over Imamatsu in view of Heidari

and further in view of Saito. Applicant respectfully traverses these rejections for the reasons discussed below.

Rejection of Claims 1, 4, 6, and 8-9 Under 35 U.S.C. § 103(a)

The Examiner rejected independent Claim 1 and dependent Claim 4, as well as independent Claim 6 and dependent Claims 8-9, under 35 U.S.C. § 103(a) on the basis that the claims are suggested by Imamatsu in view of Heidari and further in view of Fries et al. and further in view of Saito. Except as noted in the following paragraph, the discussion of Imamatsu and Heidari and Saito in the most recent office action reiterates the application of those references to the claims (Claims 1, 4, 6, and 8-9 along with now-canceled Claims 2 and 7) provided in the office action mailed April 29, 2004. Applicant hereby incorporates the response to that office action by reference as if fully restated herein.

In the most recent office action, the Examiner has conceded that neither Imamatsu nor Heidari “clearly disclose[s] wherein an arithmetic unit verifies a pointer of a completely received final update data set and determines a next pointer in connection with the next data set, which should be received next.” (Office Action at 3-4) (emphasis added)

Recognizing the deficiency of Imamatsu and Heidari in this regard, the Examiner erroneously relies on Fries et al. to provide what is missing. Contrary to the Examiner states, Fries does not use pointers for allowing restarting the remaining parts of update data.

The use of pointers as taught by Fries et al. does not suggest the use of pointers in Claims 1, 4, 6, and 8-9. Fries et al. use pointers to identify which sections of a program are to be upgraded. (Fries et al., Abstract and column 1, line 39 through column 2, line 21, cited in the Office Action at 4 and 7) By contrast, independent Claims 1 and 6 (and, therefore, dependant Claims 4 and 8-9) use pointers to verify that update data has been correctly received. (Claim 1, line 8; Claim 6, line 10). The Abstract of Fries, cited by the Examiner, states that the clients receive the upgrade file and being processing the file to reconstruct the new version of the software from the

new sections included in the upgrade file and from matching sections obtained locale from the stored old version of software. This is not akin to verifying a pointer of a completely received final update data set and determining a next pointer in connection with the next data set which should be received next. In short, Fries has nothing to do with determining if a transmission is interrupted due to any disconnection between a base station and a terminal device. Fries only relates to being able to use “stored old versions” with a scaled down “upgrade file”. If Fries were combined with Imamatsu and Heidari as proposed, Fries might provide the ability to use an update file in combination with stored files, however the resulting combination would not provide the ability to restart the transmission process for the remaining parts of the update data (as contemplated by claims 1 and 4).

Furthermore, Saito also does not provide the feature lacking in Imamatsu, Heidari and Fries (and the Examiner has not relied on Saito for this feature). Saito describes a portable telephone apparatus which receives data in blocks, and permits received calls to be detected during downloading. Saito is not related to updating a program in a terminal device and would not be combined by one of ordinary skill in the art with a product that upgrades programs in a terminal device. Moreover, even if Saito were combined with Imamatsu and Heidari and Fries, the resulting entity would not have an arithmetic unit that verifies a pointer of a completely received final update data set (as noted above, Fries is directed to allowing the use of stored old versions together with a scaled down upgrade file).

Rejection of Claims 3 and 5 Under 35 U.S.C. § 103(a)

Claims 3 and 5, which depend from Claim 1, were rejected under 35 U.S.C. § 103(a) as unpatentable over Imamatsu in view of Heidari and in further view of Saito. The basis given for rejecting these claims is essentially the same as the basis given for rejecting the same claims (along with now-canceled Claim 2) in the office action mailed April 29, 2004, and Applicant hereby incorporates the response to that office action by reference as if fully restated herein.


In addition, as discussed above, independent Claim 1 is patentably distinct from Imamatsu, Heidari, and Fries et al. Because Claims 3 and 5 depend from Claim 1, they are likewise patentably distinct from prior art and should be allowed.

Conclusion

In view of the foregoing, Applicant submits that Claims 1, 3-6, and 8-9 are patentably distinct from the prior art of record and are in condition for allowance. The Examiner is respectfully requested to pass the above application to issue. The Examiner is invited to contact the undersigned at the telephone number listed below, if needed.

Applicant hereby makes a written conditional petition for extension of time, if required. Please charge any deficiencies in fees and credit any overpayment of fees to Attorney's Deposit Account No. 50-2041 (Whitham, Curtis & Christofferson).

Respectfully submitted,

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